

## Department of Justice

## § 16.78

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) since an exemption being claimed for subsection (d) makes this subsection inapplicable.

(3) From subsection (d) because access to the records contained in this system might compromise ongoing investigations, reveal confidential informants, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously re-investigated.

(4) From subsections (e)(1) and (e)(5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interest of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness, and completeness of all information obtained.

(5) From subsection (e)(2) because in a criminal investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement because the subject of the investigation would be placed on notice as to the existence of the investigation and would therefore be able to avoid detection or apprehension, to influence witnesses

improperly, to destroy evidence, or to fabricate testimony.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it would compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(7) From subsections (e)(4) (G) and (H) because this system of records is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k).

(8) From subsection (e)(8) because the individual notice requirement of this subsection could present a serious impediment to law enforcement in that this could interfere with the U.S. Attorney's ability to issue subpoenas.

(9) From subsections (f) and (g) because this system has been exempted from the access provisions of subsection (d).

[Order No. 1-87, 52 FR 3631, Feb. 5, 1987]

### **§ 16.78 Exemption of the Special Counsel for Immigration-Related, Unfair Employment Practices Systems.**

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (d).

(1) Central Index File and Associated Records, JUSTICE/OSC-001.

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries.

(2) From subsection (d) because access to the records might compromise ongoing investigations, reveal confidential informants, or constitute unwarranted invasions of the personal

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privacy of third parties who are involved in a certain investigation.

[Order No. 10-88, 53 FR 7735, Mar. 10, 1988]

### § 16.79 Exemption of Pardon Attorney Systems.

(a) The following systems of records are exempt from 5 U.S.C. 552a(d):

(1) Executive Clemency Files (JUSTICE/OPA-001).

(2) Freedom of Information/Privacy Acts (FOI/PA) Request File (JUSTICE/OPA-003).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(b) Exemption from subsection (d) is justified for the following reasons:

(1) Executive Clemency Files contain investigatory and evaluative reports relating to applicants for Executive clemency. The FOI/PA Request File contains copies of documents from the Executive Clemency Files which have not been released either in whole or in part pursuant to certain provisions of the FOI/PA. Release of such information to the subject would jeopardize the integrity of the investigative process, invade the right of candid and confidential communications among officials concerned with recommending clemency decisions to the President, and disclose the identity of persons who furnished information to the Government under an express or implied promise that their identities would be held in confidence.

(2) The purpose of the creation and maintenance of the Executive Clemency Files is to enable the Pardon Attorney to prepare for the President's ultimate decisions on matters which are within the President's exclusive jurisdiction by reason of Article II, Section 2, Clause 1 of the Constitution, which commits pardons to the exclusive discretion of the President.

[Order No. 26-88, 53 FR 51542, Dec. 22, 1988]

### § 16.80 Exemption of Office of Professional Responsibility System—limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5) and (8), (f) and (g):

(1) Office of Professional Responsibility Record Index (JUSTICE/OPR-001).

These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because release of the disclosure accounting would enable the subject of an investigation to gain information concerning the existence, nature and scope of the investigation and seriously hamper law enforcement efforts.

(2) From subsections (c)(4), (d), (e)(4)(G) and (H), (f) and (g) because these provisions concern individual access to records and such access might compromise ongoing investigations, reveal confidential informants and constitute unwarranted invasions of the personal privacy of third persons who provide information in connection with a particular investigation.

(3) From subsections (e)(1) and (5) because the collection of information during an investigation necessarily involves material pertaining to other persons or events which is appropriate in a thorough investigation, even though portions thereof are not ultimately connected to the person or event subject to the final action or recommendation of the Office of Professional Responsibility.

(4) From subsection (e)(2) because collecting the information from the subject would thwart the investigation by placing the subject on notice of the investigation.

(5) From subsections (e)(3) and (e)(8) because disclosure and notice would provide the subject with substantial information which could impede or compromise the investigation. For example, an investigatory subject occupying a supervisory position could, once made aware that a misconduct investigation was ongoing, put undue pressure on subordinates so as to preclude their cooperation with investigators.

(c) The following system of records is exempted from 5 U.S.C. 552a(d).